THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21839 of 2001

Dated:22.06.2007

Between:

G.Varamma.

…Petitioner

and

Agent to Government and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21839 of 2001

ORDER:

The Special Revenue Inspector (Tribal Welfare), Paloncha, filed a complaint before the second respondent to the effect that the land belonging to a Scheduled Tribe, the third respondent herein, was in occupation of the petitioner, a non-tribal person. Therefore, the second respondent initiated action in Case No.631 of 1988, under Section 3(2) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Regulation No.I of 1959), as amended by Regulation I of 1970 (hereinafter called 'the Regulation'). After receiving notice issued under Rules 7(1) and (2) of the Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969, the petitioner appeared and produced pahani extracts for survey No.185/2, for the years 1979-1980, 1980-1981 and 1983-1984 as well as an unregistered sale deed, dated 19.06.1962. After considering these documents, the second respondent recorded a finding that the land was transferred from a tribal to a non-tribal in contravention of Section 3 of the Regulation, and accordingly, ordered ejectment of the petitioner. Aggrieved by the same, the petitioner filed an appeal, being C.M.A.No.79 of 1998, before the first respondent, who by impugned order, dated 21.01.2001, dismissed the appeal, confirming the order of the second respondent.

Learned counsel for the petitioner contends that the petitioner acquired the property from Gunda Laxmi Narsaiah and Yelka

Thirapaiah, prior to coming into force of Regulation I of 1970 and that her vendor purchased the property from the third respondent and his three brothers on 25.04.1960. Therefore, the transaction is not regulated by the Regulation. Secondly, he submits that though evidence was produced before the original authority, the original and the appellate authorities failed to consider the same. The petitioner filed an additional affidavit on 29.01.2006 raising an additional ground. Relying on the same, the learned counsel submits that the matter was heard by one Reddy Achari, the then Special Deputy Collector and final order was passed by the Special Deputy Collector, by name, Sri Ch.Seetha Rama Murthy.

It is now settled principle that when there is an order of the original authority against which appeal is filed, the said order will merge in the appellate order, whether the appellate authority reverses or confirms the order of the original authority. In a writ petition challenging the order of the appellate authority, the attack must be directed towards the appellate order. If, in a given case, a particular point is urged and the same was not considered by the original authority, the same itself can be a ground of appeal. In this case, the petitioner in the grounds of appeal or on the oral arguments before the first respondent never raised any ground to the effect that the transaction was not regulated. Insofar as the order of the appellate authority is concerned, it found that in the revenue records from 1959-1960 to 1972-1973, the name of the third respondent was shown as pattadar, and the names of Kalthi Muthaiah, Yelka Thirapaiah and Gundrathi Narsaiah were interpolated with different ink and hand writing in the pahani for the year 1963-1964. The appellate authority also found that the sale deed, dated 01.06.1962, was executed by Laxmi Narasaiah and Thirapaiah on a stamp paper of Rs.3/- and the same being an unregistered document, it cannot be admitted as evidence in proof of sale in favour of the petitioner. In any view of the matter, the same being question of fact, it cannot be re-adjudicated in the writ petition.

In the result, for the above reasons, the writ petition fails and is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

22.06.2007
GJ